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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2002 from the Permanent Mission of Portugal to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Portugal to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan and has the honour to communicate the following information regarding the implementation of Security Council resolution 1390 (2002).

The sanctions regime imposed by Security Council resolution 1390 (2002) is being incorporated into a European Union regulation that will soon be adopted in order to facilitate the full implementation of the mandatory measures contained in that resolution.

Moreover, with a view to the prompt domestic implementation of its regime, resolution 1390 (2002) was divulged through official channels to the entities in charge of the control of the application of sanctions in the relevant ministerial departments of the Administration, accompanied by a request to report on the measures taken to ensure its implementation throughout the Portuguese territory.

From the responses received to date it is possible to make the following assessment:

The Ministry of Defence, through the General Director of Armament and Defence Equipment, reported that no export of arms or technology had been authorized to those individuals and entities referred to in paragraph 2 of resolution 1390 (2002).

The Ministry of Finance reported the freezing of three accounts in the total amount of €323.12 belonging to individuals included in the list established pursuant to the European Union regulations 467/2002 of 6 March 2001 and 2580/2001 of 27 December 2001, which implement Security Council resolutions 1267 (1999), 1333 (2000) and 1373 (2001). Additional elements of information needed for the effective identification of two individuals included in the same list were requested of the Committee established pursuant to resolution 1267 (1999), through the European Commission.

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A preventive measure signalling the prohibition of entry into the national territory of the individuals identified in the list referred to in Security Council resolution 1390 (2002) was included, pursuant to Decree-law 244/98, in the National Integrated Information System. No such individuals, however, have been detected to date by the system.

The Ministry of Justice reported that the names of two individuals included on the list referred to in Security Council resolution 1390 (2002), Ahmed Ali and Mohammad, were identified in the birth registration documents of two Portuguese nationals in the Central Registration Office. However, as these names are the only available element of information, it is not possible to conclude, at this stage, whether the individuals on the list and those with the registered names are the same persons.

As concerns the measures to enforce and strengthen through legislative instruments the measures imposed under domestic laws or regulations to prevent and punish violations of the measures referred to in paragraph 2 of resolution 1390 (2002), we wish to underline the enactment of law 11/2002, published on 16 February 2002 in the Portuguese official journal, which establishes a new criminal regime for punishing those responsible for violating sanctions imposed by the Security Council.

This law, which is an important tool for ensuring the full domestic implementation and efficacy of those regimes established by the Security Council or by European regulations, determines the application of three to five years of imprisonment, or, in the case of legal persons, severe fines for those found to be responsible for the violation of sanctions regimes. This information had already been conveyed in the report by Portugal to the Counter-Terrorism Committee concerning the implementation of resolution 1373 (2001). An unofficial English translation of law 11/2002, of 16 February 2002, is annexed to the present note for informative purposes.

Annex to the note verbale dated 16 April 2002 from the Permanent Mission of Portugal to the United Nations addressed to the Chairman of the Committee

Law 11/2002 of 16 February 2002, establishing the penal regime applicable to situations of violation of sanctions imposed by Security Council resolutions or European Union regulations (unofficial translation)

Article 1 - *Object*

This law establishes the penal regime applicable to situations of violation of financial or commercial sanctions adopted by Security Council resolutions or European Union regulations which impose restrictions to the establishment or holding of financial or commercial relations with States, other entities or individuals as explicitly identified in the correspondent subjective scope of application.

Article 2 - *Violation of the duty to freeze funds and financial assets*

(1) Those, who, in violation of the sanctions referred to in article 1, directly or indirectly, make available to entities identified in the resolutions or regulations referred to in article 1, any funds or financial resources which these entities may use or take benefit from, will be punished with imprisonment from 3 to 5 years.
(2) The negligence is punishable with a fine up to 600 days.
(3) The attempt is punishable.

Article 3 - *Violation of other duties*

(1) Those who establish or hold any juridical relationship which falls under the scope of sanctions with any of the subjects identified in the resolutions or regulations referred to in article 1, or acquires or increases the participation or the control over real estate, a company or other type of legal person, even if irregularly constituted, located, registered or constituted in a territory identified in those resolutions or regulations, will be punished with imprisonment from 3 to 5 years.
(2) The application of (1) above will not be prejudiced by the fact that the acquisitions or increase in the participation in question took place, as a result of the exchange of goods, assets, services or technologies, including patents, capitals, payment of debts or any other financial resources.
(3) The attempt is punishable.

Article 4 - *General provisions*

(1) Legal persons, companies and associations are responsible for violations committed by their bodies or representatives acting in their name and interest.
(2) The lack of validity or juridical efficacy of the acts on which the juridical relationship between the individual and the legal person is founded do not prejudice the application of the rule contained in (1) above.

(3) The principal sanction applicable to a legal person is a fine of an amount that cannot be less than the value of the transaction made nor higher than the double of that value.
(4) In case of violation in which there is no transaction, the fine will be of an amount between 5,000.00 and 2,500,000.00 Euros and between 2,500.00 and 1,000,000.00 Euros, depending on whether the fine is to be applied, respectively, to a financial institution or to any other individual or entity.
(5) As an accessory sanction applicable to individuals and legal persons, the publication of the condemnatory court decision may be ordered.
(6) The acts committed in violation of the sanctions referred to in article 1 are considered null.

Article 5 - *Proceedings concerning the material scope of this law*

In criminal proceedings concerning the facts which fall under the scope of application of sanctions, or those connected to them, or when there is a relation between the accused and those facts, the Prosecutor may request the preventive seizure of the respective funds and financial resources.

Article 6 - *Prevention and repression*

In the prevention and repression of the infractions foreseen in this law, the special provisions concerning money laundering are applicable.

Article 7 - *Obligation to identify*

In case of transactions made pursuant to the *Decreto-Lei* 352-A/88, of 3 October, and if there is a suspicion of violation of the sanctions referred to in article 1, the burden to identify the beneficiary or beneficiaries of the transaction falls upon the suspect.